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October 29, 2013

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Request for Review by American Teleconferencing Services, Ltd.,
d/b/a Premiere Global Services of Decision of Universal Service
Administrator and Request for Waiver of One-Year Downward Revision
Deadline for FCC Forms 499-A, WC Docket No. 06-122 –
PUBLIC VERSION**

Dear Ms. Dortch:

On behalf of American Teleconferencing Services, Ltd. d/b/a Premiere Global Services ("ATS") (USAC Filer ID: 827254), by its attorneys, enclosed please find a redacted public version of ATS's Request for Review of Decision of Universal Service Administrator and Request for Waiver of One-Year Downward Revision Deadline for FCC Forms 499-A ("Request for Review and Waiver") and Declaration of Lori Hendricks (collectively "the Filing").

Under separate cover, ATS is submitting an unredacted version of the Filing along with a request for confidential treatment pursuant to Section 0.459 of the Commission's rules.

If you have any questions concerning this filing, please contact me.

Sincerely,



Steven A. Augustino

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)	
)	
Request For Review by)	
American Teleconferencing Services, Ltd.)	WC Docket No. 06-122
d/b/a Premiere Global Services)	
of Decision of Universal Service Administrator)	
and Request for Waiver of One-Year Downward)	
Revision Deadline for FCC Forms 499-A)	
_____)	

**REQUEST FOR REVIEW BY AMERICAN TELECONFERENCING SERVICES, LTD.
D/B/A PREMIERE GLOBAL SERVICES OF DECISION OF UNIVERSAL SERVICE
ADMINISTRATOR AND REQUEST FOR WAIVER OF ONE-YEAR DOWNWARD
REVISION DEADLINE FOR FCC FORMS 499-A**

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Jameson J. Dempsey
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Washington, D.C. 20007-5108

October 29, 2013

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SUMMARY

American Teleconferencing Services, Ltd., d/b/a Premiere Global Services (“ATS” or “Company”) (USAC Filer ID: 827254) requests that the Federal Communications Commission (“FCC” or the “Commission”) (1) reverse USAC’s decision to reject ATS’s revised amended 2012 FCC Form 499-A, which was filed to correct a ministerial error that has subjected ATS to ██████████ in true-up invoices where it expected to receive approximately ██████████ in refunds, and (2) waive the one-year downward revision deadline for Forms 499-A to allow ATS to resubmit its revised amended 2012 FCC Form 499-A.

In early 2013, ATS for the first time obtained access (through its third-party billing software provider) to information and reporting capabilities allowing ATS to more precisely track and report revenues associated with international and foreign traffic. This capability demonstrated that previous ATS filings had included a significant amount of *non-assessable* revenues related to non-US-transiting, foreign-to-foreign traffic in its contribution base. To correct this over-reporting, ATS submitted an amended 2012 FCC Form 499-A on March 28, 2013, designed to segregate those non-assessable foreign revenues from its assessable interstate and international audio-bridging revenues. However, due to a ministerial error and unbeknownst to ATS at the time, ATS reported these non-assessable foreign-to-foreign revenues on line 417, rather than on line 418.3(a) of the amended 2012 FCC Form 499-A. As a result, although ATS had attempted to *remove* those foreign revenues from its contribution base, in effect, those revenues (and some newly-identified foreign revenues) mistakenly were added to assessable revenues.

ATS did not receive any communication from USAC regarding its error and did not detect the error itself until it received its first true-up invoices on July 25, 2013, after the one-

year deadline for downward revisions to FCC Forms 499-A had passed. To the surprise of ATS, which had expected to receive a true-up refund of approximately [REDACTED], the invoice indicated that ATS owed [REDACTED] in true-up based on its amended 2012 FCC Form 499-A (or [REDACTED] for each of three true-up invoices). As a result, the total impact of the adjustment, when measured against ATS's expected refund, was approximately [REDACTED] in unexpected true-up.

A reversal of USAC's decision and a waiver of the revision deadline are in the public interest. The Commission has granted waiver requests in the past in circumstances sufficiently similar to the facts here to warrant a grant of ATS's waiver request. Specifically, a reversal and waiver is appropriate here because: (1) ATS's error was ministerial in nature; (2) the error has imposed—and absent a waiver will continue to impose—a disproportionate financial hardship on ATS; (3) upon discovery of its error, which affected ATS's 2012 and 2013 FCC Form 499-A filings, ATS immediately investigated the matter and filed corrected forms; and (4) ATS paid its first invoice in full on October 2, 2013, and is committed to paying the remaining true-up invoices in accordance with USAC's "pay-and-dispute" policy.

Granting ATS's waiver request would alleviate the great financial hardship that has been imposed on ATS, would be consistent with Commission precedent, and would not undermine the goals of the USF.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
)	
Request For Review by)	
American Teleconferencing Services, Ltd.)	WC Docket No. 06-122
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**REQUEST FOR REVIEW BY AMERICAN TELECONFERENCING SERVICES, LTD.
D/B/A PREMIERE GLOBAL SERVICES OF DECISION OF UNIVERSAL SERVICE
ADMINISTRATOR AND REQUEST FOR WAIVER OF ONE-YEAR DOWNWARD
REVISION DEADLINE FOR FCC FORMS 499-A**

American Teleconferencing Services, Ltd., d/b/a Premiere Global Services

(“ATS” or “Company”) (USAC Filer ID: 827254), by its undersigned counsel and pursuant to Section 54.719(c) of the Federal Communications Commission’s (“FCC” or “Commission”) rules, respectfully requests that the Commission (1) reverse USAC’s decision to reject ATS’s revised amended 2012 FCC Form 499-A, which was filed to correct a ministerial error that has subjected ATS to [REDACTED] in true-up invoices (where it expected to receive approximately [REDACTED] in refunds), and (2) waive the one-year revision deadline for FCC Forms 499-A to allow ATS to resubmit its revised amended 2012 FCC Form 499-A.¹

¹ Pursuant to 47 C.F.R. § 54.720(a), this petition was originally due on October 21, 2013. However, due to the government shutdown, the Commission extended the deadlines for

A reversal of USAC's decision and a waiver of the revision deadline are in the public interest. The Commission has granted similar waiver requests in circumstances substantially similar to those here. In short, granting ATS's waiver request would alleviate the disproportionate financial hardship that has been imposed on ATS, would be consistent with Commission precedent, and would not undermine the goals of the USF.

I. QUESTION PRESENTED FOR REVIEW AND RELIEF REQUESTED

ATS submits the following question for FCC review:

Whether, following the precedent of *Ascent Media Group, Inc.* and *American Broadband Communications*, ATS should be permitted to correct a ministerial error in its amended 2012 FCC Form 499-A where the amendment contained a ministerial error and where failure to correct the ministerial error will impose a significant financial hardship on ATS.

As relief, ATS requests that the Commission, pursuant to its authority under 47 C.F.R. § 54.719(c), reverse USAC's decision to reject ATS's revised amended 2012 FCC Form 499-A. ATS also requests that the Commission find, pursuant to 47 C.F.R. § 1.3, that there is good cause to waive the one-year downward revision deadline for FCC Forms 499-A and allow ATS to resubmit its revised amended 2012 FCC Form 499-A.

II. STATEMENT OF FACTS

ATS is a provider of audio-bridging, videoconferencing, and online collaborative solutions. Together with its affiliates, ATS provides service to over 40,000 customers throughout the United States and around the world. Since the FCC issued its 2008 *InterCall Order*, ATS has been subject to Universal Service Fund ("USF or "Fund") contribution

certain filings. *See Revised Filing Deadlines Following Resumption of Normal Commission Operations*, Public Notice, DA 13-2025 (rel. Oct. 17, 2013). As such, the filing deadline for this petition was extended to November 4, 2013. Therefore, this petition is timely filed.

obligations for its provisioning of interstate audio-bridging service.² ATS has diligently reported USF revenues to the best of its capabilities, using systems not originally designed to make the distinctions necessary for USF purposes. ATS has timely filed all relevant FCC regulatory filings, including all past Forms 499-A and 499-Q.

In early 2013, ATS for the first time obtained access (through its third-party billing software provider) to information and reporting capabilities allowing ATS to more precisely track and report revenues associated with international and foreign traffic.³ This capability demonstrated that previous ATS filings had included a significant amount of *non-assessable* revenues related to non-US-transiting, foreign-to-foreign traffic in its contribution base.⁴ To account for this over-reporting, ATS submitted an amended 2012 FCC Form 499-A on March 28, 2013, designed to segregate those non-assessable foreign revenues from its assessable interstate and international audio-bridging revenues.⁵ This amendment was filed within the one-year deadline for such revisions. USAC accepted the revision. However, due to a ministerial

² See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, CC Docket No. 96-45, 23 FCC Rcd 10731 (rel. Jun. 30, 2008) (“InterCall Order”).

³ Declaration of Lori Hendricks (Oct. 25, 2013) (“Hendricks Decl.”) at ¶ 6.

⁴ See 2012 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 20 (March 2012) (“Line 418 should include revenues from telecommunications provided in a foreign country where the traffic does not transit the United States . . .”).

⁵ See Hendricks Decl. at ¶ 7; see also Letter from Anne Jacobs to USAC Data Collection Agent (Mar. 28, 2013), attached to Hendricks Decl. as Exhibit E (noting that “the calculations and adjustments included in [ATS’s amended 2012 FCC Form 499-A and original 2013 FCC Form 499-A] stem largely from (i) traffic pattern shifts resulting in more foreign to foreign only traffic and (ii) more detailed information becoming available from ATS’s third party billing service provider”). Because ATS obtained access to this reporting information before it was required to file its 2013 FCC Forms 499-A, ATS used the updated information in its original 2013 FCC Form 499-A filings for ATS and two of its affiliates: (1) Budget Conferencing Inc. (“Budget”) (USAC Filer ID: 827253) and (2) Premiere Conferencing (Canada) Ltd. (“PGi Canada”) (USAC Filer ID: 827261). See *id.* at ¶ 8. Upon discovering the error described in this petition, ATS timely filed amended 2013 FCC Forms 499-A for ATS, Budget, and PGi Canada on August 5, 2013. See *id.* at ¶ 11. USAC accepted and approved these amendments on August 15, 2013. See *id.* at ¶ 12. ATS’s appeal solely relates to the amendments to its 2012 FCC Form 499-A.

error and unbeknownst to ATS at the time, ATS mistakenly reported these non-assessable foreign-to-foreign revenues on line 417, rather than on line 418.3(a) of the amended 2012 FCC Form 499-A.⁶ As a result, although ATS had attempted to *remove* those foreign revenues from its contribution base, due to the ministerial error, those revenues (and some newly-identified foreign revenues) were listed as assessable revenues.

ATS did not receive any communication from USAC regarding its error and did not detect the error itself until it received its first true-up invoices on July 25, 2013, after the one-year deadline for further downward revisions to FCC Forms 499-A had passed.⁷ To the surprise of ATS, which had expected to receive a true-up refund of approximately [REDACTED], the invoice indicated that ATS owed [REDACTED] in true-up based on its amended 2012 FCC Form 499-A (or [REDACTED] for each of three true-up invoices).⁸ Thus, the total impact of the adjustment, when measured against ATS's expected refund, was approximately [REDACTED] in unexpected true-up.⁹

Upon receiving the unexpected invoice, ATS immediately sought to investigate the source and scope of its reporting error. This investigation revealed that the error spanned four separate 499-A filings, including ATS's 2012 and 2013 FCC Forms 499-A and the 2013 FCC Form 499-A filings of two affiliated filers, Budget and PGi Canada. ATS promptly implemented procedures to ensure that it correctly reports revenues from foreign-to-foreign traffic going forward. Next, ATS promptly prepared and filed amendments to its 2012 and 2013 FCC Forms 499-A.¹⁰ As relevant here, the revised amended 2012 FCC Form 499-A moved

⁶ See *id.* at ¶ 10.

⁷ See *id.* at ¶ 9.

⁸ See *id.* at ¶ 7.

⁹ See *id.* at ¶ 14.

¹⁰ See *id.* at ¶ 11.

██████████ of misreported foreign-to-foreign revenues from line 417(a) and (e) to line 418.3(a) of ATS's 2012 FCC Form 499-A. Further, in its cover letter to USAC, ATS (through its parent, Premiere Global Services, Inc. ("PGi")) explained the unique circumstances surrounding the revisions to ATS's amended 2012 FCC Form 499-A:

In early 2013, PGi gained access to new reporting capabilities from its third party billing service provider that allowed it to track and report USF revenues more precisely. That capability demonstrated that PGi had over-reported 2011 and 2012 revenues primarily related to non-assessable, non-US-transiting foreign-to-foreign traffic. The amended 2012 Form 499-A for ATS and the initial 2013 Forms 499-A for ATS, PGi Canada and Budget reported revenues using this new capability, and for the first time PGi was able to separate and report these foreign-to-foreign revenues. However, PGi did not detect until the receipt of the invoices in July 2013 that a ministerial error had caused these non-assessable, non-US-transiting foreign-to-foreign revenues to be mistakenly reported on line 417 of the relevant Forms 499-A instead of line 418. . . . These USF Filings are being made promptly after the error was discovered.¹¹

Although USAC accepted all of ATS's amended 2013 FCC Forms 499-A,¹² USAC rejected ATS's revised amended 2012 FCC Form 499-A.¹³

ATS is now faced with substantial true-up bills for entirely non-assessable foreign-to-foreign revenues based on a ministerial reporting error made in conjunction with brand new reporting information. Although the invoiced true-up amounts impose a great financial hardship upon ATS, ATS paid its July 22, 2013 invoice in full (including any interest due) on October 2, 2013, and will pay its remaining true-up invoices in full in accordance with USAC's "pay and dispute" policy.

¹¹ See Letter from Anne Jacobs to USAC Data Collection Agent, at 1 (Aug. 5, 2013) ("8/5/13 Jacobs Letter"), attached as Exhibit I to Hendricks Decl.

¹² See *id.* at ¶ 12.

¹³ See *id.* at ¶ 13.

III. COMMISSION PRECEDENT JUSTIFIES GRANT OF ATS'S WAIVER REQUEST

On a number of occasions, the Commission has reversed USAC decisions and granted requests for waivers of filing deadlines in situations involving ministerial errors that are substantially similar to the circumstances here. In the interest of equity and consistency, granting ATS's request for a waiver is also justified in this case.

In 2004, the Wireline Competition Bureau ("Bureau") issued its order modifying the deadline for submitting downwardly revised annual Telecommunications Reporting Worksheets ("FCC Form 499-A").¹⁴ As relevant here, the Order clarified the Bureau's intention "to reject as untimely any Form 499-A revised filing not submitted within twelve months of the due date of the original filing in question, if the revision would decrease . . . contributions to support mechanisms for universal service"¹⁵ Previously, the Bureau had instated a nine-month revision deadline that "contemplated the potential for revisions beyond that time period if there was good cause for the delay in filing and an explanation justifying the change."¹⁶ However, with the rule change, the Bureau imposed "a firm twelve-month deadline."¹⁷

The Bureau articulated a number of justifications for the change.¹⁸ Specifically, it reasoned that the firm deadline would (1) "help ensure the stability and sufficiency" of the fund,

¹⁴ See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Associations*, CC Docket Nos. 96-45, 98-171, 97-21, Order, 20 FCC Rcd 1012, 1012, ¶ 1 (rel. Dec. 9, 2004) ("FCC Form 499-A One-Year Deadline Order").

¹⁵ See *id.*

¹⁶ See *id.* at 1016, ¶ 10.

¹⁷ See *id.*

¹⁸ See *id.*

(2) “improve the integrity of the universal service contribution methodology,” (3) “promote efficiency in administration of the universal service support mechanism,” and (4) “allow USAC and other fund administrators to reduce substantially the need for adjustments regarding a given contribution per year, providing certainty to contributors and their customers.”¹⁹ Moreover, the Bureau opined that one year was a “sufficient period of time” for revisions because contributors would have had two previous opportunities to review and file revenue information—namely, the actual revenues reported on the relevant quarterly reporting worksheet (“FCC Form 499-Q”) and the original FCC Form 499-A.²⁰ As such, the Bureau concluded that the twelve-month deadline provides contributors with “adequate time to discover errors, while providing incentive to submit accurate revenue information in a timely manner.”²¹ The Bureau decision is subject to a pending application for review.²²

The Commission’s rules permit companies to seek a waiver of Commission rules for “good cause shown.”²³ The Commission has stated that it “generally finds good cause to grant a waiver of its rules where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the

¹⁹ *See id.*

²⁰ *See id.* at 1017, ¶ 11.

²¹ *See id.*

²² *See In re Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of The National Exchange Carrier Association, SBC Communications Inc. Application for Review of Action Taken Pursuant to Delegated Authority, CC Docket Nos. 96-45, 98-171, 97-21 (filed Jan. 10, 2005).*

²³ 47 C.F.R. §1.3.

policy objective of the rule in question.”²⁴ The Commission has further noted that it “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”²⁵ In general, the Commission has analyzed the nature of the error and the magnitude of the harm when determining whether good cause exists to grant a waiver of USAC revision deadlines.²⁶ As described below, a waiver is warranted here because (1) the error was clerical in nature, (2) the error has caused disproportionate financial hardship for ATS, (3) ATS immediately sought to correct its error, and (4) ATS paid its July 22, 2013 invoice in full on October 2, 2013, and will pay its remaining true-up invoices in full in accordance with USAC’s “pay and dispute” policy.

A. ATS’s Error was Clerical in Nature

The FCC has granted waivers of revision deadlines where the error was clerical in nature. For example, the FCC has found good cause to waive revision deadlines where filers have mistakenly commingled assessable and non-assessable revenues in their contribution base.

²⁴ *In re Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance with Deadlines for Tier III Carriers*, CC Docket No. 94-102, Order, 20 FCC Rcd 7709, ¶ 9 (2005).

²⁵ *See In re Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096, n.10 (2008) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir. 1969).

²⁶ *See Federal-State Joint Board on Universal Service; Universal Service Contribution Methodology; Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, CC Docket No. 96-45, WC Docket No. 06-122, Order, 23 FCC Rcd 10096 (rel. June 26, 2008) (“Aventure Order”); *In the Matter of Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket No. 06-122, Order, DA 13-1608 (rel. July 22, 2013) (“American Broadband Order”); *In the Matter of Universal Service Contribution Methodology; Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, 28 FCC Rcd 06150 (rel. May 3, 2013) (“Ascent Media Order”).

In the *Aventure Order*, the FCC found good cause to grant a waiver of the 45-day revision deadline for FCC Forms 499-Q where the filer had erroneously listed its total company revenues—“includ[ing] access and other revenues not subject to [USF] contributions”—in its contribution base, rather than simply listing its assessable interstate and international end-user revenues on its FCC Form 499-Q.²⁷ Similarly, in the *Ascent Media Order*, the Commission concluded that a waiver was justified where the filer had “mistakenly reported its total projected company revenues instead of its end-user interstate and international telecommunications revenues” on its August 2007 FCC Form 499-Q.²⁸

The same considerations that drove those cases (which involved errors in the Forms 499-Q) apply in the case of Form 499-A errors. Here, faced *for the first time* with the ability to identify and segregate non-assessable foreign-to-foreign revenues, ATS timely amended its 2012 FCC Form 499-A, and in doing so inadvertently listed those non-assessable foreign-to-foreign revenues under line 417 instead of line 418.²⁹ ATS clearly explained these circumstances in its cover letter submitting its revised amended 2012 FCC Form 499-A.³⁰

Consequently, just as in the *Aventure Order* and the *Ascent Media Order*, ATS substantially and unintentionally over-reported its assessable revenues by including revenues from foreign-to-foreign traffic in its USF contribution base rather than simply including “end-user interstate and international telecommunications revenues.” Moreover, because ATS only obtained the capability to segregate its non-assessable foreign-to-foreign revenues shortly before filing its March 28, 2013 amended 2012 FCC Form 499-A, and because ATS only discovered

²⁷ See *Aventure Order*, 23 FCC Rcd at 10098-99, ¶ 7.

²⁸ See *Ascent Media Order*, 28 FCC Rcd 06150, 6153-54, ¶¶ 6, 10.

²⁹ See Hendricks Decl. at ¶¶ 6, 10.

³⁰ See 8/5/13 Jacobs Letter at 1.

the reporting error after the one-year downward revision deadline, ATS was left with no opportunity to correct the error on its 2012 FCC Form 499-A. As such, the clerical nature of ATS's error and Commission precedent support a finding of good cause to grant a waiver of the one-year downward revision deadline for filing FCC Forms 499-A.

B. ATS's Error has Caused Significant Financial Hardship

The Commission also has considered the magnitude of the error and the degree of financial hardship when deciding whether good cause warrants granting a waiver of a revision deadline. In the *Ascent Media Order*, the filer's reporting error led to invoices that were ten times the company's typical monthly invoice, in addition to significant interest and penalties.³¹ Similarly, in the *American Broadband Order*, a typographical error caused an extra zero to be added to the filer's Form 499-Q projected revenues, leading to projected end-user telecommunications revenues that were ten times as large as intended.³² Finally, in the *Aventure Order*, an error in reporting projected end-user telecommunications revenues led to an invoice that was nearly twenty times as large as the amount that the filer should have owed.³³

Failure to grant a waiver in this case will impose a great financial hardship on ATS. Specifically, based on the inadvertent error in its amended 2012 FCC Form 499-A, ATS is now faced with true-up invoices that will total [REDACTED].³⁴ Compounding this financial burden is the fact that ATS had expected to receive a refund of approximately [REDACTED].³⁵ As a result, the total difference between ATS's expected refund and what it is being asked to pay is

³¹ See *Ascent Media Order*, 28 FCC Rcd at 06153, ¶ 6.

³² See *American Broadband Order* ¶ 6.

³³ See *Aventure Order*, 23 FCC Rcd at 10097, ¶ 5.

³⁴ See Hendricks Decl. at ¶ 9.

³⁵ See *id.* at ¶ 7.

approximately [REDACTED].³⁶ The economic consequences of requiring ATS to pay these unexpected invoices for non-assessable foreign-to-foreign traffic are significant. Therefore, it is critical that the Commission remain consistent with its past precedent and find that a clerical error of this magnitude justifies granting a waiver so that ATS may submit its revised amended 2012 FCC Form 499-A.

C. ATS Immediately Sought to Correct Its Error

When determining whether a waiver is appropriate, the Commission has also looked to when the filer first became aware of the error, the steps that the filer took to remedy it, and the filer's compliance with USAC's "pay and dispute" policy. For example, in the *Aventure Order*, the filer first realized its error when it received its invoice from USAC, and immediately filed a corrected FCC Form 499-Q, which USAC rejected because it fell outside the 45-day revision period.³⁷ Despite substantial hardship, Aventure paid its invoice of \$275,000—an overpayment of approximately \$261,000—pursuant to USAC's "pay and dispute" policy, established measures to ensure that the error would not happen again, and thereafter filed an emergency request for review with the FCC.³⁸ Similarly, in the *Ascent Media Order*, the filer first discovered its error when it received an invoice from USAC. Ascent then paid its October invoice (\$717,000), appealed to USAC, and sought to correct its future invoices.³⁹

Here, ATS first realized its error when it received its July 2013 true-up invoice.⁴⁰ Upon realizing its error, ATS took immediate action to rectify the filing. First, ATS took prompt

³⁶ See *id.* at ¶ 14.

³⁷ *Aventure Order*, 23 FCC Rcd at 10096-97, ¶ 2.

³⁸ See *id.* at 10097-98, ¶¶ 5-6.

³⁹ Ascent Petition at 3; *Ascent Media Order* 28 FCC Rcd at 06154-55, ¶¶ 10-11.

⁴⁰ See Hendricks Decl. at ¶ 9.

steps to determine the cause of the error and to implement procedures to ensure that it correctly reports revenues from foreign-to-foreign traffic going forward.⁴¹ Shortly thereafter, ATS filed amendments for each of the affected Forms 499-A to correctly report its non-assessable revenues associated with foreign-to-foreign traffic.⁴² In this way, ATS's post-discovery behavior is distinguishable from cases like the *IP Telecom Order* and the *Outfitter Satellite Order*, where the Commission found that a waiver was not warranted in part because the petitioner had failed to take immediate action to remedy its error.⁴³ Finally, although paying these erroneous true-up invoices will cause great financial hardship for ATS, ATS paid its July 22, 2013 invoice in full on October 2, 2013, and will pay its remaining true-up invoices in full in accordance with USAC's "pay and dispute" policy.⁴⁴ Based on the prompt and effective steps that ATS has taken to address and resolve its clerical error, and its commitment to pay these invoices, the FCC should grant a waiver of the one-year downward revision deadline and allow ATS to resubmit its revised amended 2012 FCC Form 499-A.

D. Granting a Waiver is in the Public Interest

Granting a waiver here is in the public interest. In revising its amended 2012 and original 2013 FCC Forms 499-A, ATS sought to accurately report interstate and international revenues owed to the Fund, and to exclude non-assessable foreign-to-foreign revenues. ATS only first became subject to USF reporting obligations in 2008 along with the rest of the audio-

⁴¹ See *id.* at ¶ 10.

⁴² See *id.* at ¶ 11; see also 8/5/13 Jacobs Letter at 1.

⁴³ *Universal Service Contribution Methodology, Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, DA 13-1917, ¶ 14 (rel. Sept. 17, 2013) ("Outfitter Satellite Order"); *In the Matter of Universal Service Contribution Methodology, Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, 26 FCC Red 11216, ¶ 8 (rel. Aug. 8, 2011) ("IP Telecom Order").

⁴⁴ See Hendricks Decl. at ¶ 14.

bridging industry. It has diligently reported USF revenues to the best of its capabilities, using systems not originally designed to make the distinctions necessary for USF purposes. Because ATS only obtained access to the more precise reporting information in early 2013, these filings represented the *first* opportunity ATS had to segregate and report non-assessable foreign-to-foreign revenues. As such, ATS could not have reasonably discovered its error earlier than it did. However, despite the fact that ATS's 2012 and 2013 FCC Forms 499-A were amended at the same time and contained the exact same ministerial error, USAC only accepted ATS's 2013 FCC Form 499-A amendments, and rejected ATS's 2012 FCC Form 499-A. Based on the nature and timing of the error and the circumstances surrounding its discovery, it would be unreasonable for USAC to treat ATS's 2012 and 2013 filings differently.

Moreover, because the error here occurred on ATS's 2012 FCC Form 499-A, it will not be made whole absent a waiver. In the context of 499-Q filings, the Commission has found that a substantial delay in being made whole through the Form 499-A true-up process supported granting a waiver.⁴⁵ In this case, there is no subsequent true-up through which ATS can reclaim the revenues that were erroneously included in its contribution base. Therefore, it is in the public interest for the FCC to grant a waiver of the one-year revision period and allow ATS to file its revised amended 2012 FCC Form 499-A.

IV. THE UNIVERSAL SERVICE FUND WILL NOT BE ADVERSELY IMPACTED

As expressed above, ATS recognizes the rationale underlying the one-year downward revision deadline for filing FCC Forms 499-A—namely, to “improve administrative efficiency, provide certainty, stability, and sufficiency for the funds covered by the [Form].”⁴⁶

⁴⁵ *Aventure Order*, 23 FCC Rcd at 10098, ¶ 6 (finding that a delay of 15 months before the petitioner could benefit from the annual true-up supported granting a waiver).

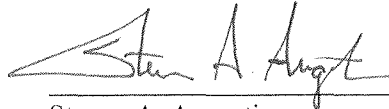
⁴⁶ *IP Telecom Order*, ¶ 3 (citing to FCC Form 499-A One-Year Deadline Order, ¶ 10).

The Universal Service Fund will not be harmed, and USAC will not be prejudiced, if the Commission waives the one-year downward revision deadline in this case. The clerical error at issue here, while burdensome to a company of ATS's size, is only a tiny portion of the entire USF fund. Indeed, ATS's overpayment, which totals [REDACTED], represents only [REDACTED] of the total fund.⁴⁷ This small amount is well within the anticipated 1% uncollectible amount established by the Commission when it calculates the contribution factor. Therefore, granting the waiver in this case will not adversely impact the fund, while ensuring that the error in question here does not impose a grossly disproportionate burden on ATS.

V. CONCLUSION

For the foregoing reasons, ATS respectfully requests that the Commission grant ATS's request to reverse USAC's decision to reject ATS's revised amended 2012 FCC Form 499-A and for a waiver of the one-year downward revision deadline so that ATS may resubmit its revised amended 2012 FCC Form 499-A and avoid its erroneous USF contribution assessments.

Respectfully submitted,



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Dated: October 29, 2013

⁴⁷ See 2012 USAC Annual Report, 37 (finding that the total size of the Universal Service Program for calendar year 2012 was \$8,710,234,000).

DECLARATION OF LORI HENDRICKS

I, Lori Hendricks, hereby declare the following:

1. I am over the age of eighteen and am competent to testify to the matters herein.
2. I have personal knowledge of the statements made in this declaration or believe them to be true to the best of my knowledge and belief.
3. I am the U.S. Controller for Premiere Global Services, Inc. ("PGI"). PGI is the direct parent company of American Teleconferencing Services, Ltd. ("ATS"). I have served in this position since July 21, 2008. Among other responsibilities, I oversee the accounting and reporting of ATS's revenues in connection with its quarterly FCC Form 499-Q and annual FCC Form 499-A Universal Service Fund ("USF" or "Fund") filings to the Universal Service Administrative Company ("USAC").
4. As relevant to this appeal, I oversaw the accounting and reporting of ATS's 2011 revenues in connection with its original 2012 FCC Form 499-A, amended 2012 FCC Form 499-A, and revised amended 2012 FCC Form 499-A. In addition, I oversaw the accounting and reporting of ATS's 2012 revenues in connection with its original 2013 FCC Form 499-A and amended 2013 FCC Form 499-A. Finally, I oversaw the accounting and reporting of revenues for the original and amended 2013 FCC Forms 499-A for a number of ATS affiliates, including Budget Conferencing Inc. ("Budget") and Premiere Conferencing (Canada) Ltd. ("PGI Canada").
5. On March 27, 2012, ATS filed its original 2012 FCC Form 499-A, which reported ATS's revenues for the 2011 calendar year.¹ USAC received ATS's original 2012 FCC Form 499-A on March 29, 2012, and sent ATS a confirmation email on April 19, 2013 to confirm that USAC had approved the filing.² On July 24, 2012, USAC notified ATS that USAC owed ATS a true-up credit of [REDACTED] since "the total interstate and international revenue reported and certified on [ATS's] 499-A was less than what was reported on [ATS's] 499-Q forms."³ This credit was paid to ATS over its July 2012, August 2012, and September 2012 USF invoices.⁴

¹ See 2012 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2011 Revenues) for American Teleconferencing Services, Ltd. (Filer 499 ID: 827254) (Mar. 27, 2012) ("ATS 2012 FCC Form 499-A"), attached as **Exhibit A**.

² See Email from USAC to Anne Jacobs (Apr. 19, 2012, 11:14AM), attached as **Exhibit B**.

³ See Email from USAC Customer Support to Anne Jacobs (July 24, 2012, 11:56AM), attached as **Exhibit C**.

⁴ See Invoice from USAC to American Teleconferencing Services, Ltd. (July 20, 2012); Invoice from USAC to American Teleconferencing Services, Ltd. (Aug. 22, 2012); Invoice from USAC to American Teleconferencing Services, Ltd. (Sept. 21, 2012), attached as **Exhibit D**.

6. In early 2013, PGi was able to obtain more detailed reporting data from its third-party billing service provider, which allowed PGi to more precisely track and report revenues related to international and foreign traffic from ATS, Budget, and PGi Canada. This new data revealed, among other issues, that ATS had erroneously reported certain non-assessable, non-U.S.-transiting foreign-to-foreign traffic as assessable on its 2012 FCC Form 499-A. Realizing this error, ATS promptly investigated its reporting practices and prepared an amended 2012 FCC Form 499-A filing to segregate and accurately report its non-assessable, non-U.S.-transiting foreign-to-foreign traffic.

7. On March 28, 2013, ATS submitted an amended 2012 FCC Form 499-A filing to USAC that incorporated the changes made possible by the new reporting data.⁵ Among other changes, ATS segregated [REDACTED] of non-U.S.-transiting, foreign-to-foreign revenues on its 2012 FCC Form 499-A.⁶ Based on its internal calculations, PGi expected to receive approximately [REDACTED] in true-up credits from its more precise reporting.

8. On the same day, PGi submitted its original 2013 FCC Forms 499-A for ATS, PGi Canada, and Budget.⁷ ATS segregated [REDACTED] of non-U.S.-transiting, foreign-to-foreign revenues on its original 2013 FCC Form 499-A.⁸ Similarly, PGi Canada and Budget also segregated their non-U.S.-transiting, foreign-to-foreign revenues on their respective original 2013 FCC Forms 499-A.⁹ As with ATS's 2012 FCC Forms 499-A, ATS, PGi Canada, and Budget expected to receive true-up credits for their 2013 FCC Forms 499-A based on the more precise reporting information.

⁵ See Letter from Anne Jacobs to USAC Data Collection Agent (Mar. 28, 2013), attaching amended 2012 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2011 Revenues) for American Teleconferencing Services, Ltd. (Filer 499 ID: 827254) (Mar. 28, 2013) ("ATS amended 2012 FCC Form 499-A"), attached as Exhibit E.

⁶ See ATS amended 2012 FCC Form 499-A at 6.

⁷ See 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for American Teleconferencing Services, Ltd. (Filer 499 ID: 827254) (Mar. 28, 2013) ("ATS 2013 FCC Form 499-A"); 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for Budget Conferencing Inc. (Filer 499 ID: 827253) (Mar. 28, 2013) ("Budget 2013 FCC Form 499-A"); 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for Premiere Conferencing (Canada) Limited (Filer 499 ID: 827261) (Mar. 28, 2013) ("PGi Canada 2013 FCC Form 499-A"), attached as Exhibit F.

⁸ See ATS 2013 FCC Form 499-A at 6.

⁹ See Budget 2013 FCC Form 499-A at 6; PGi Canada 2013 FCC Form 499-A at 6.

9. On July 25, 2013, PGi received its first true-up invoices from USAC.¹⁰ Rather than showing the expected true-up credits, however, the invoices showed that ATS, Budget, and PGi Canada owed true-up amounts into the Fund.

10. PGi took immediate action to determine why it had received true-up bills rather than the credits it anticipated receiving. First, PGi staff contacted USAC's Customer Support team for a copy of the calculations used to prepare the invoice for ATS's 2012 FCC Form 499-A revision.¹¹ Next, PGi conferred internally to determine the source of any errors. In so doing, PGi realized that, due to a clerical error, it had mistakenly placed non-U.S.-transiting, foreign-to-foreign revenues on Line 417 of its FCC Forms 499-A, rather than on Line 418 as provided by the rules. This error applied across the board to ATS's amended 2012 FCC Form 499-A, ATS's original 2013 FCC Form 499-A, Budget's original 2013 FCC Form 499-A, and PGi Canada's original 2013 FCC Form 499-A. Finally, PGi promptly performed a detailed review of its forms in anticipation of amending them to correct the errors.

11. On August 5, 2013, PGi filed amended FCC Forms 499-A for ATS, Budget, and PGi Canada.¹² Specifically, PGi filed: (1) a revised amended 2012 FCC Form 499-A for ATS; (2) an amended 2013 FCC Form 499-A for ATS; (3) an amended 2013 FCC Form 499-A for Budget; and (4) an amended 2013 FCC Form 499-A for PGi Canada. Each of these forms corrected the same general error: moving non-assessable, non-U.S.-transiting foreign-to-foreign revenues from Line 417 of the FCC Forms 499-A to Line 418. The particular amounts that ATS, Budget, and PGi Canada moved from Line 417 to Line 418 are as follows:

- ATS 2012 FCC Form 499-A: [REDACTED]

¹⁰ See Invoice from USAC to American Teleconferencing Services, Ltd. (July 22, 2013); Invoice from USAC to Budget Conferencing Inc. (July 22, 2013); Invoice from USAC to Premiere Conferencing (Canada) Limited (July 22, 2013), attached as Exhibit G.

¹¹ See, e.g., Email from Rich Seetoo to Anne Jacobs (July 25, 2013, 5:28PM), attached as Exhibit H.

¹² See Letter from Anne Jacobs to USAC Data Collection Agent (Aug. 5, 2013), attaching Revised Amended 2012 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2011 Revenues) for American Teleconferencing Services, Ltd (Filer 499 ID: 827254) (Aug. 5, 2013) ("Revised Amended ATS 2012 FCC Form 499-A"); Amended 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for American Teleconferencing Services, Ltd. (Filer 499 ID: 827254) (Aug. 5, 2013) ("Amended ATS 2013 FCC Form 499-A"); Amended 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for Budget Conferencing Inc. (Filer 499 ID: 827253) (Aug. 5, 2013) ("Amended Budget 2013 FCC Form 499-A"); Amended 2013 FCC Form 499-A Telecommunications Reporting Worksheet (Reporting 2012 Revenues) for Premiere Conferencing (Canada) Limited (Filer 499 ID: 827261) (Aug. 5, 2013) ("Amended PGi Canada 2013 FCC Form 499-A"), attached as Exhibit I.

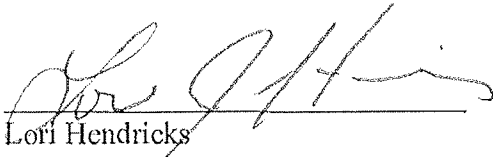
- ATS 2013 FCC Form 499-A: [REDACTED]
- Budget 2013 FCC Form 499-A: [REDACTED]
- PGI Canada 2013 FCC Form 499-A: [REDACTED]

12. On August 15, 2013, PGI received Form 499 Approval Confirmations for ATS's amended 2013 FCC Form 499-A and Budget's amended 2013 FCC Form 499-A, and on September 9, 2013, PGI received a Form 499 Approval Confirmation for PGI Canada's amended 2013 FCC Form 499-A.¹³

13. On or around August 26, 2013, ATS received a letter from USAC, dated August 21, 2013, rejecting ATS's revised amended 2012 FCC Form 499-A.¹⁴ The letter stated that USAC had reviewed ATS's revised amended 2012 FCC Form 499-A and "[b]ased on the information provided, [it was] unable to accept the revision because it was not filed within one year of the original due date."¹⁵

14. Failure to grant a waiver to allow ATS to re-submit its revised amended 2012 FCC Form 499-A will have a significant financial impact on ATS. The total difference between ATS's expected refund and what it is being asked to pay in this case is approximately [REDACTED]. Nevertheless, ATS paid its July 22, 2013 true-up invoice in full on October 2, 2013, and also will pay its remaining 2013 true-up invoices in full and in accordance with USAC's "pay and dispute" policy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing statements are true and correct.


Lori Hendricks

10/28/13
Date

¹³ See Email from USAC to Anne Jacobs confirming approval of ATS amended 2013 FCC Form 499-A (Aug. 15, 2013, 3:35PM); Email from USAC to Anne Jacobs confirming approval of PGI Canada amended 2013 FCC Form 499-A (Aug. 15, 2013, 3:35 PM); and Email from USAC to Anne Jacobs confirming approval of Budget amended 2013 FCC Form 499-A (Sept. 9, 2013, 11:36 AM), attached as Exhibit J.

¹⁴ See Letter from USAC to American Teleconferencing Services, LTD. (Aug. 21, 2013), attached as Exhibit K.

¹⁵ See *id.* at 1.

REDACTED FOR PUBLIC INSPECTION

EXHIBIT A

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT B

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT C

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT D

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT E

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT F

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT G

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT H

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT I

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT J

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**

REDACTED FOR PUBLIC INSPECTION

EXHIBIT K

**CONFIDENTIAL DOCUMENT-
WITHHELD FROM PUBLIC INSPECTION**